

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,)	Arizona Supreme Court
)	No. CR-10-0379-PC
Plaintiff,)	
)	Coconino County
v.)	Superior Court
)	No. CR1988-14105
RICHARD LYNN BIBLE,)	
)	O R D E R
)	
Defendant.)	FILED 03/16/2011
)	

Richard Lynn Bible was convicted of first degree murder and sentenced to death. His conviction and sentence were affirmed on direct appeal. *State v. Bible*, 175 Ariz. 549, 858 P.2d 1152 (1993), *cert. denied*, 511 U.S. 1046 (1994). Bible unsuccessfully sought post-conviction relief in state and federal court. See *Bible v. Ryan*, 571 F.3d 860 (9th Cir. 2009) (affirming denial of petition for writ of habeas corpus), *cert. denied*, *Bible v. Ryan*, 130 S. Ct. 1745 (2010).

On March 22, 2010, the State filed a motion for a warrant of execution. On April 19, 2010, Bible filed in the superior court a "Motion for Postconviction DNA Testing Pursuant to A.R.S. § 13-4240 and Petition for Postconviction Relief Pursuant to Rule 32." On May 20, 2010, we continued the motion for a warrant of execution pending resolution of the superior court proceedings. The superior court has now denied all relief sought by Bible. This petition for review seeks review of the superior court's orders.

The superior court filings sought DNA testing of hairs and other items found at the crime scene and in a vehicle Bible had stolen. The court denied relief on two grounds. First, it held that Bible failed to prove that the evidence sought to be tested still exists. Second, the court held that the request failed under A.R.S. § 13-4240(B)(1), which requires DNA testing if the court finds a "reasonable probability" that the defendant "would not have been prosecuted or convicted if exculpatory results had been obtained through [DNA] testing," and under § 13-4240(C)(1), which permits a court to order testing when a "reasonable probability" exists the verdict or sentence would have been "more favorable" to the defendant had testing results been available at trial.

We disagree with the superior court's determination that Bible had the burden of proving that the evidence sought to be tested still exists. The evidence in question was in possession of the State or the superior court at all times between its collection and trial. This is sufficient to establish under § 13-4240(A) a presumption that the evidence exists. Under § 13-4240(B)(2), the State may present evidence to the contrary, but it has not done so here.

However, the superior court did not abuse its discretion in concluding that it was not reasonably probable that the verdict or sentence would have been more favorable to Bible if DNA testing results had been available at trial. See *Bible*, 175 Ariz. 549, 589, 858 P.2d 1152, 1192 (1993) (noting that the evidence in this case "goes far beyond overwhelming"). It follows that the court also did not err in concluding that it was not reasonably probable that Bible would not have been prosecuted or convicted had the testing been conducted.

We therefore grant the petition for review, but deny relief.

DATED this _____ day of March, 2011.

FOR THE COURT:

Rebecca White Berch
Chief Justice

TO:

Jeffrey A. Zick
Daniel D. Maynard
Richard Lynn Bible, ADOC 043353, Arizona State Prison, Florence
- Eyman Complex-Browning Unit (SMU II)
Charles D. Adams
Deborah Young, Clerk of the Coconino County Superior Court
Diane Alessi
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